

SOUTH DELTA WATER AGENCY

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September 4, 2007

Delta Blue Ribbon Task Force Members
650 Capitol Mall, 5th Floor
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Dear Blue Ribbon Task Force Members:

I appreciate the opportunities you are giving the public and interested parties to comment on the development of the Delta Vision. Although the South Delta Water Agency has been monitoring and commenting on the process, it was very instructive to attend last week's two-day meeting and hear the concerns and interests of you, the Task Force members.

The current problems facing the Delta are both extremely complicated, and at the same time simple. They are complicated: for example determining what specific actions may be necessary to protect Delta smelt and other endangered and threatened species is unknown and difficult to discern. They are simple: for example the problems can be easily identified and solutions proposed. Because of this dichotomy, I would like to submit a number of short comment letters which I hope will assist you in formulating the Delta Vision. I know you are being inundated with comments and information, so I will try to keep these letters brief and to the point.

This first letter will describe the underlying cause of the fishery problems. There are lots of data regarding the decline of various species in the Delta. Generally, the declines correspond to the State Water Project coming into operation; as that facility increased exports, the impacts to numerous species began to appear. Prior to that, it appears that the system could handle the impacts of the other diversions of the system, including the CVP and increasing upstream diversions. [This is not to discount other factors such as loss of spawning grounds and the effects of the CVP on specific areas and species.]

The precipitous decline of the pelagic species corresponds directly to CalFed. This may sound strange and argumentative, but it is true and easily explainable. It also goes to the heart of the "governance" question which arises in the Vision process.

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CalFed was built on the premise of "consensus." Its founding principal was that before any regulatory agency (e.g. DFG, FWS, NMFS) would take action against DWR or USBR, the parties would consult and decide how to resolve the tension between regulating and operational needs. This is not speculation, it is contained in the various CalFed documents and agreements (of which there are many).

In practice, this meant that rather than the fishery agencies strictly applying the law and regulating those who were "taking" endangered species, they tried to find a "balance" between full regulation and consideration for export needs. The result was the inevitable corruption of the system whereby DWR operated without ANY take permit under the California Endangered Species Act and the CVP operated under take authorizations now invalidated by a Federal Judge. Many of us complained about this along the way, but our complaints fell upon deaf ears; we were the "disruptive" few outside of the consensus.

During CalFed's reign, certain species crashed; smelt is near extinction. During the same time exports were at record levels. I was on conference calls a number of years ago wherein the discussion revolved around the "take" at the export pumps of **120,000 smelt** in two weeks while the fishery representatives considered going from "yellow light" condition to "red light" and the possible impacts to exports from doing that.

The actions necessary to mitigate impacts to fish killed at the pumps were specifically limited to such things as (the misnamed) Environmental Water Account. Recent conference calls discussed how the account only had 150 TAF in it and the fishery representatives had to decide if they would use that water now and decrease exports (which were killing the fish) or hold off to use the limited amount later. Its hard to believe such a system could operated like that when dealing with endangered species, but that is what has happened.

The conclusion from this is that only through an independent regulatory process can environmental laws be effective. When the concept of maximizing exports is mixed in with the idea of protecting the environment, the environment loses. The tension between regulating and operating provides the only assurance that fisheries will be protected. Any program or vision that seeks to make each of these as important as the other, both ignores the law and is doomed to repeat the past. ***The issue of meeting California's long term water needs is separate from the requirement of protecting the Delta*** and its related fishery and other environmental needs. This concept was first recognized in California through the Mono Lake controversy and now forms a fundamental basis of environmental protection.

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Thank you for the opportunity to comment. As stated above, additional comments on other topics will follow.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Herrick", written in a cursive style.

JOHN HERRICK

JH/dd

cc: Ms. Julia Alvis